

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

YVETTE BROWN, )  
Plaintiff, )  
-vs- )  
NANCY A. BERRYHILL,<sup>1</sup> ) Civil Action No. 16-739  
COMMISSIONER OF SOCIAL SECURITY, )  
Defendant. )

AMBROSE, Senior District Judge

**OPINION**

Pending before the Court are Cross-Motions for Summary Judgment. (ECF Nos. 12 and 14). Both parties have filed Briefs in Support of their Motions. (ECF Nos. 13 and 15). After careful consideration of the submissions of the parties, and based on my Opinion set forth below, I am denying Plaintiff's Motion for Summary Judgment (ECF No. 12) and granting Defendant's Motion for Summary Judgment. (ECF No. 14).

**I. BACKGROUND**

Plaintiff brought this action for review of the final decision of the Commissioner of Social Security ("Commissioner") denying her applications for supplemental security income ("SSI") and disability insurance benefits ("DIB") pursuant to the Social Security Act ("Act"). Plaintiff filed her applications alleging she had been disabled since December 2, 2011. (ECF No. 8-7, pp. 2, 4). Administrative Law Judge ("ALJ"), Joanna Papazekos, held a hearing on September 10, 2014. (ECF No. 8-3). On November 26, 2014, the ALJ found that Plaintiff was not disabled under the Act. (ECF No. 8-2, pp. 30-43).

After exhausting all administrative remedies, Plaintiff filed the instant action with this court. The parties have filed Cross-Motions for Summary Judgment. (ECF Nos. 12 and 14). The issues are now ripe for review.

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<sup>1</sup> Nancy A. Berryhill became acting Commissioner of Social Security on January 23, 2017, replacing Carolyn W. Colvin.

## **II. LEGAL ANALYSIS**

### **A. Standard of Review**

The standard of review in social security cases is whether substantial evidence exists in the record to support the Commissioner's decision. *Allen v. Bowen*, 881 F.2d 37, 39 (3d Cir. 1989). Substantial evidence has been defined as "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate." *Ventura v. Shalala*, 55 F.3d 900, 901 (3d Cir. 1995), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Additionally, the Commissioner's findings of fact, if supported by substantial evidence, are conclusive. 42 U.S.C. §405(g); *Dobrowolsky v. Califano*, 606 F.2d 403, 406 (3d Cir. 1979). A district court cannot conduct a *de novo* review of the Commissioner's decision or re-weigh the evidence of record. *Palmer v. Apfel*, 995 F.Supp. 549, 552 (E.D. Pa. 1998). Where the ALJ's findings of fact are supported by substantial evidence, a court is bound by those findings, even if the court would have decided the factual inquiry differently. *Hartranft v. Apfel*, 181 F.3d 358, 360 (3d Cir. 1999). To determine whether a finding is supported by substantial evidence, however, the district court must review the record as a whole. See, 5 U.S.C. §706.

To be eligible for social security benefits, the plaintiff must demonstrate that he cannot engage in substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months. 42 U.S.C. §423(d)(1)(A); *Brewster v. Heckler*, 786 F.2d 581, 583 (3d Cir. 1986).

The Commissioner has provided the ALJ with a five-step sequential analysis to use when evaluating the disabled status of each claimant. 20 C.F.R. §404.1520(a). The ALJ must determine: (1) whether the claimant is currently engaged in substantial gainful activity; (2) if not, whether the claimant has a severe impairment; (3) if the claimant has a severe impairment, whether it meets or equals the criteria listed in 20 C.F.R., pt. 404, subpt. P., appx. 1; (4) if the

impairment does not satisfy one of the impairment listings, whether the claimant's impairments prevent him from performing his past relevant work; and (5) if the claimant is incapable of performing his past relevant work, whether he can perform any other work which exists in the national economy, in light of his age, education, work experience and residual functional capacity. 20 C.F.R. §404.1520. The claimant carries the initial burden of demonstrating by medical evidence that he is unable to return to his previous employment (steps 1-4). *Dobrowolsky*, 606 F.2d at 406. Once the claimant meets this burden, the burden of proof shifts to the Commissioner to show that the claimant can engage in alternative substantial gainful activity (step 5). *Id.*

A district court, after reviewing the entire record may affirm, modify, or reverse the decision with or without remand to the Commissioner for rehearing. *Podedworny v. Harris*, 745 F.2d 210, 221 (3d Cir. 1984).

#### **B. Opinion Evidence and Residual Functional Capacity (“RFC”)**

Plaintiff asserts the ALJ erred in weighing the medical evidence resulting in an improper RFC not supported by substantial evidence.<sup>3</sup> (ECF No. 13, pp. 13-18). Specifically, Plaintiff argues that the ALJ erred in giving little weight to the opinion of Dr. Rattan, a non-examining state agency medical consultant, the only mental expert opinion in the case. *Id.* Therefore, Plaintiff submits that remand is necessary.

The amount of weight accorded to medical opinions is well-established. Generally, the ALJ will give more weight to the opinion of a source who has examined the claimant than to a non-examining source. 20 C.F.R. § 416.927(c)(1). In addition, the ALJ generally will give more

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<sup>2</sup> RFC refers to the most a claimant can still do despite his limitations. 20 C.F.R. §§ 404.1545(a), 416.945(a). The assessment must be based upon all of the relevant evidence, including the medical records, medical source opinions, and the individual's subjective allegations and description of his own limitations. 20 C.F.R. § 416.945(a).

<sup>3</sup> The ALJ found that Plaintiff had the RFC to perform light work, with the only exception being that “she is limited to unskilled work.” (ECF No. 8-2, p. 35).

weight to opinions from a treating physician, “since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of [a claimant’s] medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.” *Id.* § 416.927(c)(2). If the ALJ finds that “a treating source’s opinion on the issue(s) of the nature and severity of [a claimant’s] impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence [of] record,” he must give that opinion controlling weight. *Id.* Also, “the more consistent an opinion is with the record as a whole, the more weight [the ALJ generally] will give to that opinion.” *Id.* § 416.927(c)(4).

In the event of conflicting medical evidence, the Court of Appeals for the Third Circuit has explained:

“A cardinal principle guiding disability determinations is that the ALJ accord treating physicians’ reports great weight, especially ‘when their opinions reflect expert judgment based on continuing observation of the patient’s condition over a prolonged period of time.’” *Morales v. Apfel*, 225 F.3d 310, 317 (3d Cir. 2000) (*quoting Plummer v. Apfel*, 186 F.3d 422, 429 (3d Cir. 1999)). However, “where . . . the opinion of a treating physician conflicts with that of a non-treating, non-examining physician, the ALJ may choose whom to credit” and may reject the treating physician’s assessment if such rejection is based on contradictory medical evidence. *Id.* Similarly, under 20 C.F.R. § 416.927(d)(2), the opinion of a treating physician is to be given controlling weight only when it is well-supported by medical evidence and is consistent with other evidence in the record.

*Becker v. Comm'r of Social Sec. Admin.*, No. 10-2517, 2010 WL 5078238, at \*5 (3d Cir. Dec. 14, 2010). Although the ALJ may choose whom to credit when faced with a conflict, he “cannot reject evidence for no reason or for the wrong reason.” *Diaz v. Comm'r of Soc. Security*, 577 F.3d 500, 505 (3d Cir. 2009).

In this case, the ALJ gave Dr. Rattan’s opinion little weight. (ECF No. 8-2, pp. 41-42). There is no other mental opinion evidence of record. While I acknowledge that “[r]arely can a decision be made regarding a claimant’s [RFC] without an assessment from a physician

regarding the functional abilities of the claimant," *Gormont v. Astrue*, No. 11-2145, 2013 WL 791455 at \*7 (M.D. Pa. Mar. 4, 2013), *citing Doak v. Heckler*, 790 F.2d 26 (3d Cir. 1986), it is not a requirement. *Cummings v. Colvin*, No. 14-cv-251, 2015 WL 4092321, \*6 (W.D. Pa. July 7, 2015). Rather, an ALJ is charged with formulating the RFC based on ***all*** of the relevant evidence, medical evidence or otherwise. 20 C.F.R. § 416.945(a).

Specifically, the ALJ discounted Dr. Rattan's opinion evidence as inconsistent with Plaintiff's testimony, her course of treatment (and multiple missed appointments), the medical records, and her activities of daily living. (ECF No. 8-2, pp. 41-42). These are appropriate, valid and acceptable reasons for discounting opinion evidence. See, 20 C.F.R. §§416.927, 404.1527 (Evaluating Opinion Evidence). Based on the above, I am able to make a meaningful review. After a review of the evidence, I find there is substantial evidence of record to support the ALJ's finding that Plaintiff did not have mental functional limitations. See, ECF No. 8-2, pp. 35-42. Thus, I find the ALJ did not err in formulating Plaintiff's mental RFC. Consequently, remand is not warranted on this basis.

### C. Headaches

Plaintiff also asserts that the ALJ erred in determining her RFC as it relates to the frequency and severity of her headaches. (ECF No. 13, pp. 18-22). Basically, Plaintiff argues that the ALJ failed to include limitations pertaining to her migraines. *Id.* In support thereof, Plaintiff points to evidence that supports her position that she has limitations related to her headaches. *Id.* at pp. 19-22). To be clear, the standard is not whether there is evidence to establish Plaintiff's position but, rather, is whether there is substantial evidence to support the ALJ's finding. *Allen v. Bowen*, 881 F.2d 37, 39 (3d Cir. 1989). Thus, this support is misplaced.

The ALJ found Plaintiff's migraines to be a severe impairment. (ECF No. 8-2, p. 33). Just because an impairment is found to be severe, however, does not mean that it erodes a plaintiff's RFC. *Franklin v. Astrue*, No. 10-CV-02532-PAB, Civ No. 10-cv-2532, 2012 WL 1059995, at \*3 (D.

Colo. Mar. 28, 2012) (“Simply because plaintiff established a ‘severe impairment’ which only ‘requires a de minimis showing of impairment,’ does not necessarily require that the ALJ conclude that the impairment materially erodes plaintiff’s RFC.”).

An ALJ must base her RFC assessment on all of the relevant evidence of record. 20 C.F.R. §§ 404.1545(a), 416.945(a). In her opinion, the ALJ must provide sufficient explanation of her final determination to provide the reviewing court with the benefit of the factual basis underlying the ultimate disability finding. *Cotter v. Harris*, 642 F.2d 700, 705 (3d Cir.1981). That is, the ALJ's decision must allow the court to determine whether any rejection of potentially pertinent, relevant evidence was proper. *Johnson v. Comm'r of Soc. Sec.*, 529 F.3d 198, 203–04 (3d Cir. 2008); see also *Fargnoli v. Massanari*, 247 F.3d 34, 42 (3d Cir.2001) (the ALJ's decision should allow the reviewing court the ability to determine if “significant probative evidence was not credited or simply ignored”).

In determining Plaintiff's RFC, the ALJ thoroughly considered Plaintiff's headaches and the associated record evidence. (ECF No. 8-2, pp. 36-42). Specifically, she detailed Plaintiff's medical records related to Plaintiff's headaches. *Id.* at pp. 37-38. She also discussed Plaintiff's testimony related thereto and found it to be out of proportion to, and inconsistent with, the evidence of record. *Id.* at p. 39. For example, the ALJ noted that Plaintiff “testified that she frequently goes to the emergency room for her headaches and that she goes about 4 times per year (Hearing Testimony). However, after the undersigned requested the records, the claimant's representative admitted that there is no evidence to support her assertion that she frequently treats at the emergency room (Exhibit B7E).” (ECF No. 8-2, p. 39). The ALJ also noted that Plaintiff “did not take all of her medications as prescribed, including Gabapentin for headache prevention and at the correct dosage....The claimant's non-compliance with prescribed and recommended treatment indicates that either her condition is less limited than alleged or that she

is not motivated to improve her condition and further undermines the veracity of her allegations.”

*Id.* Additionally, the ALJ found Plaintiff to be not entirely credible.<sup>4</sup> *Id.* at p. 36. Based on the above, I find the ALJ adequately addressed the frequency of Plaintiff’s headaches. I further find the ALJ’s determination that the record did not support a finding of disabling limitations is based on substantial evidence. *Id.* at pp. 36-42. Therefore, remand on this basis is not warranted.

An appropriate order shall follow.

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<sup>4</sup> An ALJ is charged with the responsibility of determining credibility. *Smith v. Califano*, 637 F.2d 968, 972 (3d Cir. 1981); *Baerga v. Richardson*, 500 F.2d 309, 312 (3d Cir. 1974), cert. denied, 420 U.S. 931 (1975). The ALJ must consider “the entire case record” in determining the credibility of an individual’s statement. SSR 96-7p. The ALJ’s decision “must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual’s statements and the reason for that weight.” *Id.* I must defer to the ALJ’s credibility determinations, unless they are not supported by substantial evidence. *Smith v. Califano*, 637 F.2d 968, 972 (3d Cir. 1981); *Baerga v. Richardson*, 500 F.2d 309, 312 (3d Cir. 1974), cert. denied, 420 U.S. 931 (1975).

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COMMISSIONER OF SOCIAL SECURITY, )  
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AMBROSE, Senior District Judge

**ORDER OF COURT**

THEREFORE, this 31<sup>st</sup> day of July, 2017, it is ordered that Plaintiff's Motion for Summary Judgment (Docket No. 12) is denied and Defendant's Motion for Summary Judgment (Docket No. 14) is granted.

BY THE COURT:

s/ Donetta W. Ambrose  
Donetta W. Ambrose  
United States Senior District Judge

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<sup>5</sup> Nancy A. Berryhill became acting Commissioner of Social Security on January 23, 2017, replacing Carolyn W. Colvin.